

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DANIEL F. RHODES, §
§
Plaintiff, § § Civil Action No. 3:05-CV-2343-D
VS. §
§
TIBOR PRINCE, et al., §
§
Defendants. §

ORDER

After making an independent review of the pleadings, files, and records in this case, the March 28, 2006 conclusions and recommendation of the magistrate judge, and plaintiff's April 10, 2006 objections, the court concludes that the conclusions and recommendation are correct and are therefore adopted.

Accordingly, the court grants as follows the parts of the motion to dismiss filed December 22, 2005 by defendants Tibor Prince, William Harris, James F. Roach, III, and Gary Krohn, and the January 23, 2006 renewed motion to dismiss filed by the foregoing defendants and defendant Jerry D. Carroll, that the magistrate judge addresses in his recommendation (he took the remainder of the motions to dismiss under advisement). The court dismisses with prejudice plaintiff's state-law tort claims against these defendants.

The court orders that, no later than May 11, 2006, plaintiff file a Fed. R. Civ. P. 7(a) reply that responds in detail to these defendants' claims that they are entitled to qualified immunity. Plaintiff's assertion in his objections that he is entitled to discovery before filing a Rule 7(a) reply is overruled. Although limited discovery is sometimes available even when the defense of qualified immunity has been raised, such discovery "must not proceed until the district court *first* finds that

the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity." *Wicks v. Miss. State Employment Servs.*, 41 F. 3d 991, 994 (5th Cir. 1995). The decision whether to allow discovery must therefore await the magistrate judge's assessment of whether plaintiff's Rule 7(a) reply is sufficient of itself to overcome defendants' claims of qualified immunity or is otherwise adequate to warrant his obtaining limited discovery.

SO ORDERED.

April 11, 2006.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE